

Hutchison-Landrieu amendment, which is an amendment that has been filed but is not yet pending.

This is an amendment that will provide a permanent exemption for publicly traded small businesses with less than \$150 million from the costly reporting requirements mandated by section 404(b) of the Sarbanes-Oxley Act. In removing this great burden, our amendment will free small businesses to focus on the capital investment and job creation that we need now to get our Nation's economy back on the right track.

In 2002, Congress passed the Sarbanes-Oxley Act in the aftermath of the huge accounting frauds at Enron, Tyco, and Worldcom. This landmark bill was enacted to restore investor confidence in the wake of these shocking abuses by making it harder for companies to misrepresent corporate earnings.

Hindsight is 20-20, though, and, while the Sarbanes-Oxley Act was well intentioned, it has created unexpected and unprecedented costs for the small to medium sized businesses that serve as the backbone of our economy.

The main culprit of this immense burden on small businesses is section 404 of Sarbanes-Oxley. Here a public company is required to include in its annual report an assessment of the effectiveness of its internal control structure and procedures for financial reporting. The company's auditor must attest to and report on the company's assessment.

The compliance costs of section 404(b) have been far greater than expected. In 2009, the SEC reported that companies paid an average of \$2.3 million to comply with section 404. When taking into account the size of a company, small businesses with less than \$150 million in public float, or the shares held by outside investors, are disproportionately encumbered by section 404(b), facing a compliance cost that is seven times greater than large companies.

Small businesses are being forced to tie up time and money on burdensome amounts of paperwork. They should be directing these resources toward operations and capital investment that will create jobs and spur our economy toward recovery. The Hutchison-Landrieu amendment will fix this issue, ensuring that smaller public companies will no longer be subject to the cost burden imposed by section 404(b).

Under current SEC rules, small public companies with less than \$75 million in public float are now exempt from section 404(b). However, this exemption expires in June. The Hutchison-Landrieu amendment builds on this existing exemption and takes into account recommendations from the SEC to increase the exemption. Our amendment will permanently exempt small businesses with less than \$150 million in public float from the section 404(b).

I am pleased that my amendment has the strong bipartisan support of my colleague, the distinguished chair of the Small Business Committee, Senator LANDRIEU. I also thank our other cosponsors, Senator BOB BENNETT, Senator SCOTT BROWN, Senator CRAPO, Senator DEMINT, and Senator HATCH.

We are offering our amendment on behalf of the small businesses across our country that face this disproportionate burden. We have the support of: The Biotechnology Industry Organization, The Competitive Enterprise Institute, TechAmerica, The Association for Competitive Technologies, Advanced Medical Technology Association, and Technet.

These groups represent the companies that want to innovate. That want to grow. They want to excel. But their companies are spending vast amounts of money on compliance costs, and, according to an SEC study, this money is being misdirected. The SEC reports that 75 percent of companies believe that the attestations of auditors required by Sarbanes-Oxley have little to no impact on investor confidence. Thus, rather than devoting important resources to invest and create jobs, small businesses are spending millions of dollars on paperwork that investors don't even care about.

Our amendment also has the support of the Independent Community Bankers of America, and the American Bankers Association. Our community banks want to lend to worthy entrepreneurs and help jump start our economy. But our entrepreneurs and small businesses are hesitant to grow if they are hit with the high costs associated with 404(b) compliance.

We are also offering this amendment because of the unintended consequences on our initial public offering market brought by section 404(b). Since the enactment of Sarbanes-Oxley in 2002, IPOs in the United States have been lower each year than in every year of the 1990s. Even in 2006, the peak year of economic growth after Sarbanes-Oxley, the 162 U.S. IPOs were far below the 295 IPOs issued in 1991 when our economy was mired in recession. This drop-off in IPO's hit the map in 2008 and 2009, when, according to a Renaissance Capital report, the IPO level was lower than any period since the Vietnam war.

Why is this? Why are companies avoiding initial public offerings? Why are companies refusing to access the capital that the stock markets provide? Quite frankly, companies do not want to deal with onerous burden of Sarbanes-Oxley. And based on the costs I mentioned, who can blame them?

This provision incentivizes small businesses to remain private to avoid 404(b) altogether. Worse, it incentivizes small businesses to go abroad to markets such as the London Stock Exchange, which has advertised itself as a Sarbanes-Oxley Free Zone, to encourage our companies to do their IPOs there instead of in America.

Small businesses should not be incentivized to stop growing or list overseas. The Hutchison-Landrieu amendment also has the support of the New York Stock Exchange and NASDAQ, who want to see American companies list here and remain home-grown. Now more than ever, we should be encouraging our Nation's small businesses to invest in new jobs, plants and markets. Our amendment will help small businesses do this by reducing their paperwork costs. A similar measure was included in the House financial reform language, and with immense bipartisan support. I ask my colleagues to support the Hutchison-Landrieu amendment to permanently exempt small businesses under \$150 million from Sarbanes Oxley section 404(b), to ensure that small businesses can fully devote their resources toward being the engines that drive our Nation's economy.

I ask unanimous consent to have printed in the RECORD the editorial that appeared today in the Wall Street Journal that is entitled "The No-Cost Stimulus."

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Wall Street Journal, May 18, 2010]

THE NO-COST STIMULUS

Senate Majority Leader Harry Reid wants a floor vote this week on financial regulatory reform, and he should first add at least one provision worthy of the name. Senators Kay Bailey Hutchison (R., Texas) and Mary Landrieu (D., La.) have offered an amendment to spare the smallest public companies from the worst bureaucratic horrors of the 2002 Sarbanes-Oxley law.

Sarbox, the Beltway's previous attempt at financial-regulatory reform, was intended to improve the information investors receive about public companies. The law did nothing to prevent poor disclosure at companies like Lehman Brothers but it did saddle the U.S. economy with billions in unexpected costs. Even the Securities and Exchange Commission, a Sarbox cheerleader, found in a 2009 survey that the average public company pays more than \$2 million per year complying with the law's Section 404. The indirect costs may be much greater, as initial public offerings of U.S. companies have never returned to pre-Sarbox levels.

The SEC admits that compliance burdens fall disproportionately on smaller companies. This is one reason the two Senators aim to exempt companies with less than \$150 million of shares held by the public from "internal-controls" audits.

These audits are piled on top of the traditional financial audit, and on top of a company's own internal-controls review. The result is that going public in the U.S., once the dream of entrepreneurs world-wide, has for too many company founders become something to avoid. If President Obama is hoping for an unemployment rate below 9%, encouraging these job creators is an obvious step.

Thanks to New Jersey's Republican Scott Garrett and Democrat John Adler, the House has already passed a similar reform. Now the Senate should allow America's most innovative companies to create jobs at no cost to taxpayers.

Mrs. HUTCHISON. Mr. President, this editorial that appeared in the Wall Street Journal today says we can have